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FILED

2015 MAR 13 AM 10:08

VIRLYNN TINNELL
SUPERIOR COURT CLERK

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE**

STATE OF ARIZONA,

Plaintiff,

vs.

JUSTIN JAMES RECTOR,

Defendant.

No. CR-2014-1193

**RESPONSE TO DEFENDANT'S
MOTION EXTENDING TIME TO FILE
RULE 12.9 MOTION**

COMES NOW, the State of Arizona, by the Mohave County Attorney and through the undersigned deputy, Gregory A. McPhillips, respectfully requests the court deny defendant's Motion to extend time to file a Rule 12.9 Motion to Challenge the Grand Jury proceedings.

Defendant's Motion concedes that the proper time for filing a motion to extend time to remand the Grand Jury has long passed.¹ Defendant is correct. Upon review of the case law it is clear that the trial court has no authority to grant an extension that is not made on a timely basis.² As such, defendant's motion for remand to the Grand Jury will be denied.

Rule 12.9, of the Arizona Rules of Criminal Procedure, defines the time limits for filing a motion to remand. "A motion under Rule 12.9(a) may be filed only after an indictment is returned and no later than 25 days after the transcript and minutes of the

¹ Page one, line 20 of defendant's motion.

² *Maule v. Arizona Superior Court ex rel. Maricopa County*. 142 Ariz. 512, 690 P.2d 813 (Ct. App. 1984).



1 grand jury proceedings have been filed or 25 days after the arraignment is held,
2 whichever is later."³

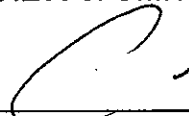
3 In *Maule v. Arizona Superior Court ex rel. Maricopa County*, 142 Ariz. 512 (Ct.
4 App. 1984), the Arizona Court of appeals, Division 1, held that a trial court has no
5 authority to grant an extension that is not made on a timely basis. "A defendant may not
6 sit back during the 25-day period under subsection (b) and do nothing without being
7 subject to a claim that he waived his objections to the grand jury proceedings by failing to
8 comply with the timeliness requirement."⁴ "This rule is not jurisdictional, in that a trial
9 court has no authority to grant a request for extension; however, the rule is mandatory in
10 that the trial court has no authority to grant an extension that is not made on a timely
11 basis."⁵

12 In the current matter, the grand jury minutes were filed on September 11, 2014,
13 and the transcript was filed on September 29, 2014, and defendant was arraigned on
14 September 19, 2014, and then defendant filed his motion on March 9, 2015. Defendant
15 filed his motion more than 25 days after the transcript of his Grand Jury proceedings was
16 filed. Further, defendant did not request an extension of time within the 25 day period.
17 Defendant's motion for remand is untimely. In this case, the trial court has no authority to
18 grant an extension of time to challenge the Grand Jury presentation.

19 Defendant's motion for remand must be denied.

20 RESPECTFULLY SUBMITTED THIS 13TH DAY OF MARCH, 2015.

21 MOHAVE COUNTY ATTORNEY
22 MATTHEW J. SMITH

23 By 
24 DEPUTY COUNTY ATTORNEY
25 GREGORY A. MCPHILLIPS

³ Ariz. Rules of Crim.Proc. Rule 12.9(b).

⁴ *Maule v. Arizona Superior Court ex rel. Maricopa County*, 142 Ariz. 512, 690 P.2d 813 (Ct. App. 1984).

⁵ *Id.*

1 A copy of the foregoing
2 sent this same day to:

3 HONORABLE LEE F. JANTZEN
4 SUPERIOR COURT JUDGE

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13 By G.T. Gavin
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